* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: February 23, 2007
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\+ W.P.(C) 10912/2006 & CM No 8367/2006

PREM KAKAR ..... Petitioner
Through Mr. N. Kinra, Advocate

versus

D.D.A. ..... Respondent
Through Mr. Anil Sapra, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

Dr. S.Muralidhar J. (open court)

The petitioner filed Writ Petition (C) 7593 of 2000 earlier in this Court seeking a writ of certiorari quashing of the decision of Delhi Development Authority ('DDA') cancelling the allotment of a flat to her at Rohini in New Delhi. The petitioner contended that the demand-cum-allotment letter had been sent to the wrong address and therefore, she suffered loss on account of the fault of the DDA. This plea was not accepted by the learned Single Judge of this Court. In the judgment 24.5.2002, it was held as under:

> "The mistake lies on the part of the petitioner. In her letter dated 7.5.1994 she clearly stated that she came to know about the allotment of flat to her. She, however, also slept over the matter and woke up only in 1998 when she again wrote a letter on 25.4.1998 requesting the respondent to send the allotment letter."

Accordingly, the writ petition was dismissed. Nevertheless, in the last portion of the judgment, the following equitable relief was granted:

> "However, the respondent in order to protect the interest of the petitioner, has agreed to allot another flat to the petitioner at current cost in the next draw. The petitioner shall be at liberty to accept the allotment of another flat at current cost."

Consequently, the respondent-DDA issued a fresh demand letter to the petitioner allotting a flat in Rohini on hire purchase basis. The petitioner was to make the initial payment before 19.9.2002. The petitioner admittedly did not make this payment.

The petitioner filed an appeal against the order of the learned Single Judge dated 24.5.2002 which came to be dismissed on 16.12.2003 by the Division Bench of this Court. Admittedly, there was no interim order during the pendency of the appeal protecting the second allotment made to the petitioner by the DDA consequent upon the direction contained in the judgment of the learned Single Judge.

Mr. Kinra, learned counsel appearing for the petitioner states that the petitioner is now prepared to make the payment for the flat allotted on the second occasion at current cost and that the respondent should be directed to allot her a flat at current cost. Mr. Anil Sapra, learned counsel appearing for the DDA points out that the petitioner not having availed the second opportunity, the said allotment stood automatically cancelled and in these circumstances, the DDA is not obliged to issue a fresh demand-cum-allotment letter.

This Court is of the view that the present case cannot be equated with other cases where they may have been delays, for various reasons, in the allottees making payments of instalments, for which the DDA has framed certain policies and where the Court has also granted

equitable relief. The present case is one where the Court did not accept the contention of the petitioner, rejected the petition on merits but granted equitable limited relief to the petitioner for availing an opportunity of taking a flat at current cost. The petitioner did not avail of the said opportunity. Also, there was no interim stay of the cancellation of the second allotment during the pendency of the petitioner's appeal before the Division Bench of this Court. In these circumstances, the contention that the petitioner has suffered injustice that warrants interference by this Court cannot merit acceptance.

The writ petition is dismissed. The application is also dismissed.

Sd/-
S. MURALIDHAR, J

FEBRUARY 23, 2007
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